

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE:

MDL Docket No 06-1791 VRW

NATIONAL SECURITY AGENCY  
TELECOMMUNICATIONS RECORDS  
LITIGATION

ORDER

This order pertains to:

Al-Haramain Islamic Foundation et  
al v Bush et al (C-07-0109 VRW),

The court has, in keeping with its orders dated January 5 (Doc #537/57), February 13 (Doc #562/71) and February 19 (Doc #566/75), reviewed the Sealed Document and the parties' various submissions on the subject of appropriate measures to prevent disclosure of classified information while allowing "both parties [] access to the material upon which the court makes a decision." RT, Hearing held January 23, 2009 (Doc #532/67) at 34 and Doc #562/71 at 2,3.

The United States, in response to the court's directive to "inform the court how it intends to comply with the January 5 order" (Doc #562/71 at 3) has offered up three similar-sounding

1 alternatives all of which appear geared toward obtaining a stay of  
2 this court's proceedings and review by the court of appeals, even  
3 though its simultaneous attempts to obtain review as of right and  
4 by means of an interlocutory appeal of the January 5 order failed  
5 in February (Doc #562/71 and Al-Haramain Islamic Foundation, Inc v  
6 Obama, No 09-15266 (9th Cir February 27, 2009)). As both this  
7 court and the court of appeals have determined that this matter is  
8 properly before the court, the United States should now comply with  
9 the court's orders.


10 Accordingly, the parties are hereby ordered to meet and  
11 confer regarding the entry of an appropriate protective order which  
12 shall be entered herein before the court rules on the merits. The  
13 United States District Court for the District of Columbia has  
14 successfully employed protective orders in the In Re Guantánamo Bay  
15 Detainee Litigation, D DC No Misc 08-0442 TFH, even providing for  
16 the use of top secret/sensitive compartmented information (TS/SCI).  
17 See, for example, the documents at docket numbers 409 and 1481 in  
18 that matter. The United States has advanced no argument that would  
19 suggest a reason why the court's use of a protective order in  
20 instant matter modeled on those in use in the Guantánamo Bay would  
21 not adequately protect the classified information at issue here.

22 The parties shall submit to the court a stipulated  
23 protective order on or before May 8, 2009. If the parties are  
24 unable to agree on all terms, they shall jointly submit a document  
25 containing all agreed terms together with a document setting forth  
26 the terms about which they are unable to reach agreement and the  
27 respective positions of the parties with regard to each such term.

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1 The court will then consider the submissions and enter a protective  
2 order under which this case may resume forward progress.

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4 IT IS SO ORDERED.

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8 VAUGHN R WALKER  
9 United States District Chief Judge  
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